

Plaintiff Armando Montalvo filed suit as representative of the estate of the decedent, Nelson

Montalvo, Jr., and for the benefit of Nelson Montalvo, Sr., and Milagros Montalvo against Defendants William Strickland, Mullen Trucking L.P., and Cougar Canyon Trucking, Ltd., asserting claims for negligence and gross negligence.

Procedural History

Defendants Mullen Trucking and Cougar Canyon Trucking filed a Motion for Partial Summary Judgment, arguing that evidence of non-vicarious negligence need not be considered by the jury. (Mot. for Partial Summ. J. (Dec. 9, 2009) [Docket Entry No. 22].) Plaintiff responded that he agrees “that this case involves the issue of negligence and/or gross negligence of the Mullen Trucking, L.P. statutory employee, William Strickland, and that non vicarious acts of negligence such as negligent supervision, training, retention and entrustment are not at issue at this time.” (Resp. to Mot. for Partial Summ. J. (Dec. 11, 2009) [Docket Entry No. 24].)

Legal Standard

Summary judgment is appropriate if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The burden is on the moving party to show that “there is an absence of evidence to support the nonmoving party’s case.” *Freeman v. Tex. Dep’t of Crim. Justice*, 369 F.3d 854, 860 (5th Cir. 2004) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)). Once the moving party meets its initial burden, the nonmoving party “must . . . set out specific facts showing a genuine issue for trial.” FED. R. CIV. P. 56(e); *Forsyth v. Barr*, 19 F.3d 1527, 1537 (5th Cir. 1994).

Analysis

Mullen Trucking and Cougar Canyon Trucking argue that they “accept responsibility for the conduct of [their] driver, William Strickland” and that “the doctrine of respondeat superior would make [them] liable anyway should the jury find [their] driver negligent.” (Mot. at 4.) They argue that evidence of negligent supervision, negligent training or negligent retention would be “duplicitous and cumulative.” (*Id.*) Defendants argue that there is no evidence that Mullen Trucking did anything that was the cause of the crash and that Plaintiff’s own truck safety expert provided no opinions of independent negligent conduct on the part of either Mullen Trucking or Cougar Canyon. (*See* Mot. exs. A, B.)

Plaintiff states that “non vicarious acts of negligence . . . are not at issue at this time.” (Resp. at 2.) Plaintiff includes expert reports which do not indicate independent negligence on the part of Mullen Trucking or Cougar Canyon. (*See* Resp. exs. A, B.)

Conclusion

Defendants’ Motion for Partial Summary Judgment is hereby GRANTED.

It is so ORDERED.

SIGNED this 14th day of December, 2009.

A handwritten signature in black ink, appearing to read 'Xavier Rodriguez', is written over a horizontal line.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE